

(2011) 08 DEL CK 0020

Delhi High Court

Case No: CS (OS) 1661 of 2003 and CS (OS) No. 2108 of 2011

Silicon Graphics
Systems India Private
Limited

APPELLANT

Vs

NIDAS Estates Private
Limited and Others

 NIDAS Estates
Private Ltd. Vs Silicon
Graphics Systems
India Private Limited

RESPONDENT

Date of Decision: Aug. 30, 2011

Citation: (2011) 8 AD 174 : (2011) 182 DLT 753

Hon'ble Judges: V.K. Jain, J

Bench: Single Bench

Advocate: Rajiv Tyagi, for the Appellant; Malavika Rajkotia, Ravi Awasthi and Ramakant Sharma, for the Respondent

Judgement

V.K. Jain, J.

CS(OS) 1661/2003

1. This is a suit for recovery of Rs. 45,23,414/-. The Plaintiff and Defendant No. 1, both of which are Private Limited Companies, entered into a license agreement dated 1st September 1995 in respect of premises bearing No. 305-A and 305-B, Embassy Square, 148 Infantry Road, Bangalore. Under the agreement the aforesaid premises was given to the Plaintiff company on license for a period of 36 months and license was renewable for another term of three years. The license was accordingly renewed for a further period of three years expiring on 31st August 2001. The Plaintiff company also deposited a sum of Rs. 2,02,100/- as security with Karnataka Electricity Board on behalf of Defendant No. 1 company. This amount according to the Plaintiff was agreed to be refunded to it by Defendant No. 1 on

expiry of the license. Another sum of Rs. 6,25,000/- was deposited by the Plaintiff with Defendants No. 2 and 3 for providing standby generating sets and upkeep and maintenance of the premises subject matter of the license agreement, and according to the Plaintiff was to be refunded to it on expiry of the term of the license. It is alleged that on expiry of the term of the license Defendant No. 1 requested the Plaintiff not to take refund of the deposits made by it with Karnataka Electricity Board and Defendants No. 2 and 3 since it wanted to retain the benefit of the higher load sanctioned by Karnataka Electricity Board as also the generator sets made available by Defendant No. 2 and 3 and agreed to pay an equivalent amount to the Plaintiff company.

2. Vide letter dated 4th September 2001 the Plaintiff called upon Defendant No. 1 to either renew the license on the terms contained in the letter or to take back possession of the licensed premises, against refund of security deposits. Defendant No. 1, however, did not agree to the terms offered by the Plaintiff for renewal of the license and the Plaintiff had to repeatedly call it upon to take possession of the licensed premises against security deposits. This led to a meeting between the officials of the Plaintiff and Defendant No. 1 on 5th October 2001, wherein the possession of the licensed premises was again offered to Defendant No. 1 against refund of security deposits. It is alleged that Defendant No. 1 did not come forward to take possession of the premises and also did not refund the security deposit, despite repeated reminders. It rather sent a notice claiming a sum of Rs. 25,29,582.50 from the Plaintiff towards license fee for the period from September to December, 2001. In a legal notice dated 14th February 2002 Defendant No. 1 also raised a claim of Rs. 9,58,448/- on the Plaintiff company, after adjusting the security amount of Rs. 27,45,000/-. Finally Defendant No. 1 took possession of the premises using a duplicate set of keys and also failed to release the security deposits and other deposits amounting to a total sum of Rs. 35,72,100/-. According to the Plaintiff, Defendants No. 2 and 3 have also failed to refund the amount of Rs. 6,25,000/- which it had deposited with them, in respect of the aforesaid premises, taking the stand that this deposit was made by the Plaintiff on behalf of Defendant No. 1. The Plaintiff has now claimed the aforesaid sum of Rs. 35,72,100/- from all the Defendants along with interest on that amount @ 18 % per annum amounting to Rs. 9,51,314/-, thereby raising a total claim of Rs. 45,23,414/-. Alternatively the Plaintiff has sought Rs. 36,74,647/- comprising security deposit of Rs. 27,45,000/- and a sum of Rs. 2,02,100/- deposited with Karnataka Electricity Board along with interest on that amount @ 18% per annum making a total sum of Rs. 36,74,647/- and a sum of Rs. 8,48,767/- from Defendants No. 2 and 3 which comprises Rs. 6,25,000/- towards security deposit and the balance amount towards interest @ 18% per annum.

3. The suit has been contested by Defendant No. 1. It is alleged in the written statement that Defendant No. 1 wanted the Plaintiff to remove the fixtures and restore the premises to its original condition as per the terms of the license agreement, but the Plaintiff wanted a sum of Rs. 5 Lacs for those fittings and was

refusing to vacate the premises till its demand for such payment was met. Defendant No. 1, however, was not willing to pay Rs. 5 lacs which the Plaintiff was demanding for those fittings and fixtures comprising false ceiling air conditioning with pipes, fire protection pipes, electrical control panel and was willing to take vacant possession of the premises on payment of its just dues which comprised license fee arrears of two months at that time. It is further alleged that when it became clear to Defendant No. 1 that the Plaintiff had no intention of returning the premises it entered the premises exercising its right under the license agreement. Defendant No. 1 has however admitted having entered into license agreement dated 1st September 1995 and having raised a sum of Rs. 27,45,000/- as deposit from Defendant No. 1. It is also admitted that the Plaintiff deposited a sum of Rs. 2,02,100/- for sanction of additional load of electricity and Rs. 6,25,000/- with Defendants No. 2 and 3 for providing standby generators and for maintenance charges.

This is also the claim of Defendant No. 1 that the Plaintiff is entitled to pay rent for the months of September 2001 and October 2001 as no notice to terminate the license was given by it.

CS(OS) No. 2108/2011 (Suit No. 100/2005/02 of District Court)

4. This suit filed before the District Court, Delhi was transferred to this Court and was consolidated with CS(OS) No. 1661/2003 vide order dated July 13, 2011. The case of the Plaintiff in this suit, which is Defendant No. 1 in CS(OS) No. 1661/2003 is that it is entitled to a sum of Rs. 37,03,448/- from the Plaintiff which comprises Rs. 1,17,425/- being the deficient license fee for September 1995, Rs. 1,37,750/- towards license fee arrears, Rs. 6,69,828/- towards license fee from June to August, 2001, Rs. 21,62,336/- towards additional license fee from September 2001 to 10th February 2002, Rs. 258,754/- towards interest @ 18% per annum and Rs. 35,855/- towards maintenance charges, and that after adjusting Rs. 27,45,000/- deposited by the Plaintiff company, it is yet to recover a sum of Rs. 9,58,448/- from it. The claim for additional license fee is based on the license agreement which provided for payment of additional fee of Rs. 5,000/- per day up to 30 days and thereafter at the rate of 10% of the total license fee payable immediately prior thereto for each 30 days period after the first 30 days period, in case the licensee continued to use the premises beyond the terms of the license.

5. The following issues were framed in CS(OS) No. 1661/2003:

1. Has the Plaintiff been always willing to make over possession w.e.f 1.9.01 and accordingly not liable to pay any charges for any period beyond 1.9.01?
2. Has the Defendant been in possession w.e.f. 1.9.01 by virtue of Clause of the Licence Deed?

3. Is the Defendant entitled to adjust the security amount in the manner stated by him in the written statement?
4. Is the Plaintiff entitled to recover the suit amount and if so from whom?
5. Relief.

The following issues were framed in suit No. 100/2005/02 of District Court:

1. Whether Plaintiff is entitled to relief claimed?
2. Relief.

Issues No. 1 to 3 in CS(OS) 1661/2003 and issue No. 1 in suit No. 100/2005/02 of District Court

6. In CS(OS) 1661/2003, the Plaintiff has filed affidavit of its Financial Controller Shri Sanjay Bhanot by way of evidence. Defendant No. 1 in this suit has filed the affidavit of its Director Mr. Rajesh Dutta by way of evidence. The suit against Defendants No. 2 & 3 in CS(OS) 1661/2003 was decreed for recovery of Rs. 6,25,000/- since they failed to deposit a sum of Rs. 6,25,000/- which they were required to deposit as a pre-condition for grant of leave to contest the suit.

7. In 100/2005/02, Mr. Rajesh Dutta has appeared in the witness box as PW-1 and Mr. Sanjay Bhanot has been examined as DW-1. In his affidavit by way evidence, Mr. Sanjay Bhanot has stated that on expiry of the licence agreement, the Plaintiff called upon Defendant No. 1 several times to take over vacant possession of the premises, but, Defendant No. 1 did not come forward to take possession since the rentals at that time were falling and it was not able to find another suitable tenant. According to him, the Plaintiff had taken a new accommodation at 405/406, P-2, Prestige Metropolitan, M.G.Road, Bangalore, with effect from 01.09.2001, vide lease agreement PW-17 and it was always ready and willing to handover the possession of the premises to Defendant No. 1. According to him, the Plaintiff having already vacated the premises, Defendant No. 1 could have taken its possession at any time, but, it did not come forward to take the possession until its own pressing need arose in this regard.

8. Mr. Rajesh Dutta, Director of Defendant No. 1 Company has, in his affidavit, stated that the Plaintiff was holding Defendant No. 1 to ransom by insisting upon large payments, ostensibly for fixtures like control panel and refusing to vacate the premises till the payment demanded by it was made. According to him, the Plaintiff was in possession and occupation of the premises till they re-entered the premises on 15th February, 2002. According to him, Defendant No. 1 had entered into a fresh agreement commencing 15.02.2002 to let out the premises in question.

9. The license deed, executed between the parties, initially provided as under:

As a security for the due payment by the Licensee and due performance by the Licensee of its obligations hereunder, the Licensee shall at the time of the execution of this Agreement deposit with the Licensor a sum of Rs 27,45,000/- (Rupees Twenty Seven Lac forty five thousand only) which the Licensor shall hold until the Licensee vacates the licensed Premises.

Without prejudice to any other right or remedy which the Licensor has in this behalf the Licensor shall be entitled to adjust from the security deposit any License Fee or other amounts payable hereunder, which remain unpaid by the Licensee and, upon such adjustment the Licensee shall forthwith replenish the security deposit to bring it to an amount of Rs 27,45,000/- (Rupees twenty seven lacs and forty five thousand only) and pay interest on the amount adjusted @ 18% per annum from the date of adjustment up to date of repletion.

The Licensor shall refund to the Licensee the unadjusted amount of the security deposit remaining in the hand of the Licensor simultaneously at the time of the Licensee vacating the Licensed Premises, free of any liability of interest and after deducting a reasonable amount for any damage caused to the premises. However, should the Licensor fail to make the refund of the security deposit stipulated above simultaneously with the Licensor delivering the vacant possession of the Licensed Premises, the Licensor shall be liable to pay interest during the period the unadjusted amount of security deposit remain unpaid by the Licensor to the Licensee. Such interest on the unadjusted amount of the security deposit shall be payable by the Licensor to the Licensee at the rate of the 18% per annum (payable on a per day basis) for up to the first 30 days during the period the amounts remain unpaid and thereafter at a rate which is enhanced by 10% (ten percent) of the rate immediately prior thereto for each 30 (thirty) days period after the first 30 (thirty) days period of non-refund of the unadjusted amount of security deposit. Interest at the enhanced rates of interest shall be payable on a cumulative basis.

The Licensee may apply for and obtain additional electricity/power for the purposes of its office activities and the Licensor shall provide all necessary assistance to enable the Licensee to security such additional electricity/power requirements from concerned authorities, to the paid or made for the additional load.

In so far as such payments shall constitute refundable deposits the Licensee shall on determination of the license give the Licensor an option to retain the original load, and if the Licensor opts to retain the load, the Licensor shall pay the Licensee the refundable amount of such deposits. If the Licensor opts not to retain the additional load, the Licensee will be at liberty to withdraw the refundable deposits with respect to addition loan and the Licensor shall execute any and all documents and authorities as are required to enable the Licensee to obtain the refund. The Licensee shall not make any structural alterations in the Licensed Premises. However, the Licensee may make any additions or alterations in the Licensed Premises for making enclosures, cabins, false ceilings etc., and install air conditioners, exhaust fans,

coolers and other electric appliances and wiring for local area network without in any manner damaging the Licensed Premises and on termination of the license, the Licensee shall be entitled to remove the same. The Licensee may remove the wall connecting the licensed premises to flat Nos. 304A and 304B. However, the LICENSEE shall on determination of the license restore the Licensed Premises to its original condition, including the partition wall or pay the Licensor the costs likely to be incurred for such restoration.

The Licensee shall stop using the Licensed Premises on the expiry of this license either by efflux of time or revocation by the Licensor. If the Licensee commits default, the Licensee shall be bound to pay apart from the license fee payable under Clause (2) supra, an addition fee of Rs. 5000/- (Rupees five thousand only) per day during the period in which it continues to use the Licensed Premises for up to 30 (thirty) days, and thereafter an additional license fee enhanced by 10% (ten per cent) of the total license fee payable immediately prior thereto for each 30 (thirty) days period after the first 30 (thirty) days period of use beyond the term of license. Acceptance of such amount, however shall not constitute acceptance of a fresh license, and shall be without prejudice to all recourse/remedy that the Licensor may have to repossess the premises.

10. It is an admitted case that the license agreement expired on 31st August, 2001. Vide letter dated 04th September, 2001 (Ex.PW-8), the Plaintiff proposed renewal of the lease/license for two years on payment of rent/license if which was lower than the rent/license fee which it was paying up to 31st August, 2003. It also requested Defendant No. 1 to refund the security deposit and accept vacant possession of the premises if the terms proposed for the renewal of the lease/license were not acceptable to it. Admittedly, the lower rent/license fee proposed by the Plaintiff was not accepted by Defendant No. 1. Vide letter dated 05th September, 2001 (Ex.PW-9), Defendant No. 1 proposed renewal of the lease at the rent of Rs 60 per sq. feet as against the rent Rs 50 per sq. feet offered by the Plaintiff. This, obviously, was not acceptable to the Plaintiff, which vide its letter dated 28th September, 2001 (Ex.PW-11), referring to its letter dated 04th September, 2001, reiterated its request for refund of the security deposit and asked the Plaintiff to send its representative to accept vacant possession of the premises and complete the formalities in this regard not later than 05th October, 2001. In reply to Plaintiff's letter dated 28th September, 2001, Defendant No. 1 wrote a letter dated 1st October, 2001 (Ex.PW-12) informing that its representative will get in touch with the Plaintiff on 05th October, 2001 to take the possession of the premises in tenantable condition, subject to the premises being restored to its original condition and to hand over security deposit after deducting outstanding dues against the premises, including cost of restoration to original condition if it was found necessary and deducting rent arrears in accordance with a statement, enclosed with the letter. The statement indicated that a sum of Rs 13,71,055/- was due to Defendant No. 1 from the Plaintiff. This amount comprised Rs 1,37,250/- towards past arrears, Rs 2,54,675/- towards rent for

September, 1995, Rs 8,93,104 towards rent from June, 2001 to September, 2001 @ Rs 2,23,276 per month and Rs 2,23,276/- towards one month's additional rent in lieu of notice as per agreement. After amount of tax required to be deducted at source, the net amount payable by the Plaintiff to Defendant No. 1, as per this statement, came to Rs 11,15,314/-.

11. Admittedly, a meeting was held on 05th October, 2001 between Mr. Ashish Randhawa of Defendant No. 1- Company and Mr. K.V. Subramanian of Plaintiff-company. The minutes of the meeting, signed by both these persons, read as under:

1. NEPL acknowledge the receipt of security deposit of Rs 6,25,000/-.
2. NEPL also has confirmed from Embassy Group, the deposit of Rs 6,25,000/- for genset paid by SGI to Embassy Group on NEPL's behalf. This amount needs to be refunded to SGI. Embassy Group and NEPL to decide amongst themselves as to who would refund this.
3. NEPL have claimed that rent for the month of September, 1995 (Rs 152,500 less TDS of Rs 35,075/-) has not been received by them. SGI to reconcile this account by Tuesday the October, 9, 2001 and get back to NEPL.
4. NEPL has also claimed Rs 1,37,250 being the balance due against arrears received in the month of May, 1998. SGI to reconcile this as well by Tuesday the October 9, 2001 and get back to NEPL.
5. NEPL has requested SGI not to surrender the additional electrical load obtained by SGI to KEB since NEPL wants to retain the same. NEPL to apply to KEB for transferring the same from SGI to NEPL. Any deposits paid by SGI would be refunded to SGI by NEPL. All charges pertaining to this would be borne by NEPL.
6. The vacant possession has already been offered by SGI to NEPL at the end of the lease period, against refund of Security Deposit.
7. SGI offers the following to NEPL against payment. Amounts to be mutually decided.

❖ False Ceiling

❖ Air Condition ducting with pipes

❖ Fire protection pipes

❖ Electrical Control Panel

12. The following facts emerged from the above-referred correspondence and minutes of the meeting held on 05th October, 2001:

(a) Though the offer of the Plaintiff to renew the lease/license for two years on payment of rent at the rate of Rs 50 per sq. feet, made vide letter dated 04th

September, 2001, was rejected by Defendant No. 1 on the very next day and a counter offer for renewal of lease at the rate of 60 per sq. feet was given, there was No. response from the Plaintiff, to the counter offer till 28th September, 2001. If the counter offer made by Defendant No. 1 was not acceptable to the Plaintiff, it ought to have rejected the same immediately on receipt of the letter dated 05th September, 2001. Moreover, the Plaintiff itself had requested Defendant No. 1, vide letter dated 28th September, 2001, to take possession by 05th October, 2001. Hence, it is difficult to accept that the Plaintiff had unequivocally offered vacant possession of the premises to Defendant No. 1 on 04th September, 2001;

(b) The Plaintiff having sought refund of security deposit and having requested Defendant No. 1 to depute its representative to accept vacant possession of the premises not later than 05th October, 2001, it made an unambiguous and unequivocally offer to Defendant No. 1 to take possession of the premises and refund the security deposit. In fact, Defendant No. 1 also had No. doubt in its mind regarding the intention of the Plaintiff in this regard and that is why it informed the Plaintiff that its representative would get in touch with them on 05th October, 2001 to take vacant possession of the premises.

(c) The letter of Defendant No. 1 dated 01st October, 2001 leaves No. doubt that Defendant No. 1 was not prepared to accept vacant possession of the premises in the condition in which the premises at that time was and wanted to accept possession only when the premises was restored to its original condition. Admittedly, the Plaintiff, in terms of the provisions of the license agreement, had installed fittings and fixtures comprising false ceiling air condition ducting with pipes, fire protection pipes, electrical control panel in the tenancy premises. Defendant No. 1, obviously, wanted the Plaintiff to remove those fittings and fixtures before it took possession of the premises from the Plaintiff.

(d) The letter of Defendant No. 1 dated 01st October, 2001 also shows that Defendant No. 1 was not willing to refund the whole of the security deposit to the Plaintiff at the time of taking vacant possession of the premises and wanted to deduct from it a sum of Rs 11,15,314/-, as detailed in the annexure of the letter.

(e) though Defendant No. 1 had claimed a gross sum of Rs 13,71,055/-, net amount of Rs 11,15,314/- after deduction of tax at source amount to Rs 2,55,714/-), the whole of the demand was not justified, as is evident from the minutes of the meeting held on 05th October, 2001, wherein Defendant No. 1 claimed only a sum of Rs 1,17,425/- towards arrears of license fee and Rs 1,37,250/- toward balance due against arrears received in May, 1998. Hence, it cannot be disputed that Defendant No. 1 had not offered to refund the whole of the amount due to the Plaintiff, after adjustments which were permissible in terms of the license deed.

(f) Even on 05th October, 2001, Defendant No. 1 acknowledged that the Plaintiff had offered vacant possession of the premises to it at the end of the lease period,

against refund of security deposit. Thus, it cannot be disputed that the Plaintiff was ready and willing to deliver possession to the Defendant on the refund of the security deposit.

13. The next question which comes up for consideration is as to whether Defendant No. 1 could have insisted upon removal of the fittings and fixtures and payment of the aforesaid sums of Rs 1,17,425/- and Rs 1,37,250/- before accepting possession of the premises.

14. As noted earlier, the licensor was required to refund the unadjusted amount of the security deposit to the licensee simultaneously at the time of the licensee vacating the licensed premises, after deducting a reasonable amount for any damage caused to the premises. The correspondence between the parties up to the meeting held on 05th October, 2001 does not indicate that Defendant No. 1 had adjusted any unpaid amount of the license fee from the security deposit by the Plaintiff-company with it, though it had claimed initially a sum of Rs 13,71,055/-, which was later reduced to two sums one of Rs 1,17,425/- and the other Rs. 1,37,250/-. Defendant No. 1, under Clause 3 of the license deed could definitely have adjusted the arrears of license fee or any other amount payable to it under the license deed from the security amount, deposited with it. The question which arises for consideration is whether any amount was actually due to Defendant No. 1 towards arrears of license fee on 1st October, 2001 when it wrote to the Plaintiff or on 05th October, 2001 when its representative had a meeting with the representative of the Plaintiff-company. A perusal of the minutes of the meeting held on 05th October, 2001 would show that the Plaintiff-company did not admit its liability for payment of the aforesaid amounts to Defendant No. 1 though it agreed to reconcile its account by 09th October, 2001 and get back to Defendant No. 1-company. There is No. evidence of the Plaintiff-company having written back to Defendant No. 1 in this regard at any point of time. In my view, if any amount was actually due to Defendant No. 1 from the Plaintiff, Defendant No. 1 was very much entitled to adjust that amount while refunding the security deposit to the Plaintiff-company. It was contended by the learned Counsel for the Plaintiff that the arrears which Defendant No. 1 had claimed from the Plaintiff-company had become barred by limitation by 1st October, 2001 and, therefore, even if it is assumed that these amounts were due to Defendant No. 1 from the Plaintiff-company, they could have adjusted while refunding the security deposit. I, however, do not find myself in agreement with the learned Counsel for the Plaintiff. The period of limitation, prescribed in Limitation Act, bars the remedy of filing a suit for recovery of an amount which has become barred by limitation, but it does not bar the claim for an amount which is otherwise due and payable and, therefore, even if some arrears had become barred by limitation, Defendant No. 1 was entitled to deduct those arrears while refunding the security deposit to the Plaintiff. The next question which comes up for consideration in this regard as to whether the amounts, claimed by Defendant No. 1, were actually due to it or not.

As noted earlier, both the parties have produced one witness each. In his affidavit Mr Rajesh Dutta of Nidas Estates Private Limited, which is Defendant No. 1 in Suit No. 1661/2003, has stated that the Plaintiff had worked out the accounts and a sum of Rs 1,17,425/- was due to it towards license fee for September, 1995 and Rs 1,37,250/- was payable to it towards arrears, in addition to license fee for the period from June to August, 2001. It is an admitted case that the Plaintiff in Suit No. 1661/2003 did not pay license fee from June to August, 2001. Defendant No. 1 in this case, therefore, could definitely have adjusted the aforesaid amount from the security deposit, along with interest for the delayed payment in terms of the license agreement. There is No. material on record to suggest that the Plaintiff at any point of time disputed its liability to pay license fee for those four months. As regards license fee for September, 1995, Mr Sanjay Bhanot, in his affidavit by way of evidence, did not claim that this amount was not due to Defendant No. 1-company or that the whole of the license fee for September, 1995 had been paid by the Plaintiff-company. Once there was a claim for recovery of this amount, the onus was on the tenant/licensee to prove that it had paid rent/license fee for the month of September, 1995. No. evidence having been led by the Plaintiff in Suit No. 1661/2003 to prove payment of rent/license fee for September, 1995, I see No. reason to disbelieve the deposition of Mr Rajesh Dutta in this regard. Another important aspect in this regard is that even in the correspondence subsequent to the meeting held on 05th October, 2001, the Plaintiff in Suit No. 1661/2003 did not claim that it had paid license fee for September, 1995. In its notice dated 27th December, 2001, Defendant No. 1 claimed rent for September, 1995. In the reply sent on 22nd January, 2002, through its counsel, the Plaintiff did not say that it had paid rent/license fee for September, 1995. Rather, it was claimed that the Plaintiff was willing to settle and adjust the dues of Defendant No. 1 on reconciliation of the accounts between the Plaintiff and Defendant No. 1. As noted earlier in the meeting held on 05th October, 2001, the Plaintiff-company had agreed to reconcile its account and revert back to Defendant No. 1 by 09th October, 2001. But, there is No. evidence of the Plaintiff having written to Defendant No. 1, disputing its liability to pay the arrears of rent/license fee for September, 1995. I, therefore, have No. hesitation in holding that the rent/license fee for September, 1995 having not been paid, Defendant No. 1 was entitled to adjust the aforesaid amount while refunding the security deposit.

15. Coming to arrears, amounting to Rs 1,37,250/-, the case of Defendant No. 1 in Suit No. 1661/2003, if examined with the help of the Annexure-II to the letter dated 1st February, 2001, appears to be that a sum of Rs 4,71,225/- was due to it as arrears up to March 1999, out of which only Rs 3,33,975/- were received in May, 1998, leaving balance arrears of Rs 1,37,250/-. However, there is No. averment to this effect in the plaint of Suit No. 100/2005/02 of District Court filed by licensor Nidas Estates Private Limited or in Suit CS (OS) No. 1661/2003. In para 22 of the plaint, Nidas Estates Private Limited claimed that it had worked out the accounts and a sum

of Rs 9,58,448/- was payable to it, which figure had been arrived at by debiting the amount of Rs 1,37,250/- to the licensee Silicon Graphics Systems India Private Limited towards license fee arrears. But, it did not say to which period these arrears pertained and how they had been worked out. Thus, there is No. specific averment to the effect that a sum of Rs 4,71,225/- was due as arrears to the Plaintiff in the suit by March, 1999 and the Defendant in the suit had paid a sum of Rs 3,33,975/- in May, 1998, leaving a balance of Rs 1,37,250/-. In his affidavit by way of evidence, Mr Rajesh Dutta, Director of Nidas Estates Private Limited, simply lifted and reproduced the averment made in para 22 of the plaint and claimed that the Plaintiff had worked out the accounts by debiting Rs 1,37,250/- towards licence fee arrears. He did not say that a sum of Rs 4,71,225/- was due to Nidas Estates Private Limited by March, 1999 and since only a sum of Rs 3,33,975/- was paid to it in May, 1998, the amount of Rs 1,37,250/- represented unpaid amount of the arrears. He did not tell the Court to which period the alleged arrears of Rs. 4,71,225/- pertained and how they had been worked out. In my view, the annexure of the letter dated 1st October, 2001 is not sufficient to prove that a sum of Rs 1,37,250/- remained unpaid to Nidas Estates Private Limited, towards unpaid arrears up to March, 1999. The Plaintiff in Suit No. 1661/203 was required to produce positive evidence during trial, to prove its claim with respect to arrears, amounting to Rs 1,37,250/-. It was required to lead positive evidence to prove how much was the total amount payable by Silicon Graphics Systems India to it towards rent/license fee, how much amount was deducted towards tax and how much was the total payment received from Silicon. Only then, the arrears could have been verified by the Court during trial. The annexure to the letter dated 1st October, 2001, in my view, cannot be a substitute for the positive evidence which Nidas Estates Private Limited was required to prove in this regard. It is settled proposition of law that mere production or even proof of a document does not amount to proof of its contents. The truthfulness or otherwise of the contents of a document can be proved only by legally admissible evidence, i.e., the evidence of a person who is in a position to vouchsafe for the truthfulness of those contents.

In AIR 1945 174 (Privy Council) the issue before the Court was whether the testatrix was as seriously ill as would result in impairment of her testamentary capacity. To substantiate the degree of illness, a letter and two telegrams written by a nurse were tendered in evidence. The question was whether in the absence of any independent evidence about the testamentary capacity of the testatrix the contents of the letter could be utilized to prove want of testamentary capacity. In these circumstances, the Privy Council observed that the fact that a letter and two telegrams were sent by itself would not prove the truth of the contents of the letter and, therefore, the contents of the letter bearing on the question of lack of testamentary capacity would not be substantive evidence. It was held that the contents of the letter and telegram were not the evidence of the facts therein and mere proof of handwriting of a document would not tantamount to proof of all the

contents or the facts stated in the document therein.

In [Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others](#), Supreme Court observed that a document does not become admissible in evidence unless its author is examined and that the contents of a document cannot be said to have been proved unless he is examined and subjected to cross-examination in a Court of law. In [Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another](#), , Supreme Court, inter alia, observed as under:

The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held, to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the evidence of those persons who can vouchsafe for the truth of the facts in issue.

16. Therefore, it was obligatory for the Nidas Estates Private Limited to lead positive evidence to prove the case setup by it in this regard. Consequently, I hold that Nidas Estates Private Limited could not have adjusted the amount of Rs 1,37,250/- while offering the refund of the security deposit.

17. As noted earlier, vide letter dated 1st October, 2001, Defendant No. 1 in Suit No. 1661/203 had informed the Plaintiff in this suit that its representative would contact them on 05th October, 2001 to take possession of the premises and refund the security deposit after adjusting outstanding dues against the premises, including cost of restoration and rent arrears in accordance with the statement, annexed to the letter. A perusal of the statement, annexed to the letter, would show that in addition to arrears of rent/license fee, Defendant No. 1 in Suit No. 1661/2003 was also seeking to deduct a sum of Rs 2,23,276/- towards additional rent in lieu of one month's notice. The license agreement between the parties expired on 31st August, 2001. Since the license expired by efflux of time on 31st August, 2001, there could be No. question of the licensee paying an amount equivalent to one month's license fee in lieu of notice to the licensor. The licensee would have been required to give notice only if it were to terminate the license before expiry of its term, but, once the license had expired by efflux of time, there was No. question of its premature termination and consequently No. occasion for giving of any notice or any amount in lieu of notice to the licensor. Therefore, Nidas Estates Private Limited was wholly unjustified in seeking to deduct the aforesaid amount of Rs 2,23,276/- while offering the refund of the security deposit. The licensor could have adjusted from security deposit only the license fee arrears or any amount payable to it under the provisions of the license deed, which could also have deducted a reasonable amount for any damage, caused to the premises. This was not the case of Nidas Estates Private Limited either in its notice dated 1st October, 2001 or during the meeting held on 05th October, 2001 that the licensee Silicon Graphics Systems India Private Limited had caused any damage to the premises and it was seeking to recover any particular amount towards compensation for such damage. In fact, No. particular amount was indicated in the letter dated 1st October, 2001 even for restoration of

the premises to its original condition. Even during the meeting held on 05th October, 2001, Nidas Estates Private Limited did not claim that it was entitled to make some deduction from the security deposit on account of damage caused by the licensee to the premises licensed/let out to it. The impression I get from the minutes of the meeting on 05th October, 2001 is that the false ceiling air conditioning with pipes, fire protection pipes, electrical control panel were offered by Silicon Graphics Systems India Private Limited to Nidas Estates Private Limited against payment. It is also quite clear from the minutes that Nidas Estates Private Limited was not unwilling to accept these fittings and fixtures against payment though, of course, it would have accepted them only on such payment which it was ready to pay for them. Therefore, it cannot be said that false ceiling air conditioning with pipes, fire protection pipes, electrical control panel construed by Nidas Estates Private Limited, caused damage to the premises for which it could have deducted a reasonable amount from the security deposit. Before making any deduction from the security deposit on account of the damage, if any, caused to the premises, the licensor was required not only to specify the damage caused to the premises, but was also required to specify a particular amount in this regard and that amount was also had to be a reasonable amount. An ambiguous offer was made to refund the security deposit, after deduction of the cost of restoration of the premises of its original condition, without claiming that the fittings and fixtures provided by the tenant/licensee in the premises had damaged the premises and without specifying a particular amount sought to be deducted in this regard. Hence, the offer to refund the security deposit made vide letter dated 1st October, 2001, does not amount to an appropriate offer to refund the security deposit.

18. In my view, Nidas Estates Private Limited could not have sought to deduct the amount of Rs 1,37,250/- or the amount of Rs 2,23,276/-, towards additional license fee in lieu of its or any amount for restoration of the premises to its original condition, while offering the security deposit to Silicon Graphics Systems India Private Limited. There would have been nothing wrong in Nidas Estates Private Limited paying/offering the balance amount of security deposit to Silicon Graphics Systems India Private Limited after adjusting the amount of Rs 1,17,425/- towards rent for September, 1995 and taking possession of the premises on or before 05th October, 2001 but No. such offer was ever made by Nidas Estates Private Limited to Silicon Graphics Systems India Private Limited. No. doubt, Silicon Graphics Systems India Private Limited could not have compelled Nidas Estates Private Limited to accept the fittings and fixtures which it had provided in the premises, but, its failure to remove those fittings and fixtures did not come in the way of Nidas Estates Private Limited taking possession of the premises from it on or before 05th October, 2001. Silicon Graphics Systems India Private Limited had done whatever it was expected to do in this regard by offering vacant possession of the premises to Nidas Estates Private Limited against payment of security deposit, vide its letter dated 28th September, 2001, it was Nidas Estates Private Limited, which failed to take

possession of the premises on 05th October, 2001. Since Nidas Estates Private Limited did not offer the balance security deposit after deduction of Rs 1,17,425/- to Silicon Graphics Systems India Private Limited and consequently, Silicon Graphics Systems India Private Limited did not handover physical possession of the premises to it, it cannot be said that Silicon Graphics Systems India Private Limited continued to be liable to pay license fee/damages for use and occupation till the time physical possession of the premises was actually taken by Nidas Estates Private Limited on 14th February, 2002. The provisions of the license deed provided for payment of the security deposit simultaneously with handing over of the possession of the premises by the licensee to the licensor. It did not provide for refund of the security deposit subsequent to the licensor taking vacant possession of the premises from the licensee/tenant. Had the agreement between the parties been for refund of the security deposit after receipt of vacant possession by the licensor, Nidas Estates Private Limited would have justified in claiming license fee/additional license fee from Silicon Graphics Systems India Private Limited in terms of the provisions contained in the license deed because in that case, Silicon Graphics Systems India Private Limited would have been under an obligation to handover the vacant possession of the premises to the licensor even before receipt of the security deposit from it and in the event of failure of the licensor to refund the security deposit, the remedy available to it, would have been to sue the licensor for refund of the security deposit. But, since the license deed provided for refund of the security deposit simultaneously with the receipt of vacant possession by the licensor, the licensee was entitled to hold back the physical possession, in case the licensor was not tendering the security deposit, after permissible adjustments, to it while receiving possession from it.

19. In my view, on receipt of letter dated 28th September, 2001 from the Plaintiff in Suit No. 1661/2003, Defendant No. 1 in the suit should have paid/offered the security deposit to the Plaintiff in the suit after adjusting the amount of Rs 1,17,425/-. Assuming that the claim of Nidas Estates Private Limited for Rs 1,37,250/- was a genuine claim, it could, at best, have adjusted the aforesaid amount along with Rs 1,17,425/- and offered the balance amount to Silicon Graphics Systems India Private Limited when its representative approached them on 05th October, 2001. That, however, was not done and the letter dated 1st October, 2001 would show that Nidas Estates Private Limited was seeking to deduct not only the aforesaid two amounts, but also the amount of Rs 2,23,276/- towards license fee in lieu of notice and an unspecified amount towards cost of restoration of the premises to its original condition, which it was not entitled to do in terms of the license deed. Even in its letter dated 18th October, 2001, receipt of which has been denied by Silicon Graphics Systems India Private Limited, Nidas Estates Private Limited was insisting on one month's license fee in lieu of notice. As regards removal of fittings and fixtures which Silicon Graphics Systems India Private Limited had installed in the premises, if Nidas Estates Private Limited did not want them, it ought to have said so

during the meeting held on 05th October, 2001 and in case it was willing to have those fittings, on a price acceptable to it and was not getting any quote from Silicon Graphics Systems India Private Limited for them, it ought to have been deputed its representative to accept possession of the premises in as is where is condition against refund of security deposit after making adjustments which were permissible in terms of the license deed. Nothing prevented Nidas Estates Private Limited from removing those fittings and fixtures after taking possession of the premises and even recovering the cost of removal of those fittings from Silicon Graphics Systems India Private Limited at a later date, but it could not have insisted on removal of those fittings and fixtures, nor could it have waited for a quote from Silicon Graphics Systems India Private Limited for them before taking possession of the premises. Admittedly, even on 15th February, 2001, Nidas Estates Private Limited took possession of the tenancy premises of its own, without receiving it from Silicon Graphics Systems India Private Limited. This would show that there was No. genuine difficulty in Nidas Estates Private Limited accepting possession of the premises from Silicon Graphics Systems India Private Limited on 05th October, 2001. Since one set of keys was always in possession of Nidas Estates Private Limited in terms of the license deed, the only thing which it was required to do was to take a formal possession from Silicon Graphics Systems India Private Limited, along with the other set of keys.

20. In [ICRA Limited Vs. Associated Journals Limited and Another](#), the lessee by its letter dated 18th November, 1997 sent a notice of termination with effect from 19th November, 1997 calling upon the landlords/Defendants to take possession of the tenanted premises and refund the security deposit after deducting the rent of previous three months along with stipulated interest. Vide reply dated 22nd November, 1997, the Defendants requested the Plaintiff for a rethinking in the matter. This letter was followed by several reminders. On 16th April, 1998, the lessee communicated to the lessor that it had shifted to new building and was No. longer in possession of the tenanted premises. In reply, the landlord claimed that delivery of vacant possession of the tenanted premises was a condition precedent to the refund of the security deposit. The case of the Plaintiff, however, was that constructive possession was handed over by them to the Defendants with the determination of the lease and actual possession was subject to reciprocal arrangement on the part of the Defendants to refund the amount of the security deposit along with stipulated interest. As per the agreement between the parties, the security was interest free and was refundable on determination/termination of the lease. Since the Defendants/landlords failed to refund the security amount, the Plaintiff/tenant filed a suit seeking recovery of the amount of security along with interest, after adjustment of rent payable by them. The Defendants filed a counter claim claiming that determination of the lease was not in accordance with the agreement since the Plaintiff continued to be in possession of the demised premises and without giving possession, the notice stood withdrawn/waived and hence No.

claim for refund of balance security amount was made out. This was also the case of the Defendants that they had come into possession of the tenanted premises only on Plaintiff's delivering the keys to them on 7th December, 1998. On receipt of letter dated 18th April, 1998 from the Defendants, the Plaintiff reiterated its willingness to give actual possession on receipt of the refund of the security deposit. The factual position which emerged from the correspondence between the parties was that the Plaintiff/tenant had terminated the lease, and had called upon the Defendants/landlords to take possession of the tenanted premises and refund the balance security. Accepting the plea taken by the Plaintiff/tenant, this Court held that the offer to vacant possession of the demised premises having been made by the Plaintiff company, it was the duty of the Defendants thereafter to act on the same and take possession after notice of termination of the lease. Regarding handing over of possession of the tenanted premises, this Court held that constructive possession was handed over to the Defendants by the Plaintiff by making an offer to take over actual possession on payment of the balance security deposit, which was sufficient to fulfill the requirement of the lease agreement between the parties. Decreeing the suit filed by the tenant, this Court, inter alia, held as under:

21. Taking into consideration the aforesaid, I am of the view that when possession of the tenanted premises is offered upon termination of the lease, the landlord/Lessor must act upon the same and cannot refuse to take the possession. If the Lessor/landlord refuses to take the possession or act upon the offer being made, the lease would not continue and therefore the contention of the Defendant that the Plaintiff had been in continued possession of the demised premises making him liable to pay the rent for the same would not stand. In such a case, the Plaintiff who has done the needful on this part is left with No. other option but to remain in possession of the said premises.

In *Onida Finance Ltd. v. Mrs. Malini Khanna*, 2002 III AD (Del) 231, the security deposit, which was equivalent to six months' rent, was refundable to tenant on expiry or termination of the lease. The Plaintiff terminated the lease vide notice dated 18th January, 1997, with effect from 14th February, 1997 and called upon the Defendant to return the security amount as also the amount of advance rent. The landlord was also intimated that the tenanted premises would remain vacant at her risk and the Plaintiff shall not be liable to pay any rent from the date the tenancy stood terminated. The contention of the Defendant before the Court was that mere offer to surrender possession was of No. consequence unless actual physical possession was delivered to her. Rejecting the contention, this Court, inter alia, held as under:

28. It is trite that when the lease is terminated by notice and the possession is offered, the landlord cannot refuse to take the possession. If the landlord refuses to take the possession, the lease would not continue. Therefore, even if the contention

of the Defendant herein was that the tenancy was for a period three years, she could take possession and thereafter sued the Plaintiff for rent. She did not do so. She took calculate risk by challenging the action of the Plaintiff in terminating the tenancy and avoided to take possession.

The view taken by me is in consonance with the view taken in the above-referred cases.

21. It was contended by the learned Counsel for Nidas Estates Private Limited that the licensor was forced to take physical possession on 15th February, 2002 only because Silicon Graphics Systems India Private Limited failed to deliver possession to it, despite repeated requests. Be that as it may, nothing prevented Nidas Estates Private Limited from taking possession on 05th October, 2001 after tendering the security deposit to Silicon Graphics Systems India Private Limited after making the permissible adjustments.

For the reasons given in the preceding paragraphs, I am of the view that Nidas Estates Private Limited is entitled to recover license fee only up to 04th October, 2001.

22. Admittedly, license fee for the period from June to August, 2001, amounting to Rs 6,69,828/- has not been paid to Nidas Estates Private Limited. That amount has been to be adjusted from the security deposit along with interest on that amount @ 18% per annum, in terms of the provisions of the license. It is also entitled to adjust the license fee of September, 1995, amounting to Rs 1,17,425/-, along with interest on that amount @ 18% per annum w.e.f 7th September, 1995, when it was payable to the licensor. In terms of the license agreement, Silicon Graphics Systems India Private Limited is liable to pay a sum of Rs 3,73,276/- towards license fee and additional license fee for September, 2001 along with interest on that amount @ 18% per annum up to 05th October, 2001 when the security deposit became refundable to it. Silicon Graphics Systems India Private Limited is also liable to pay a sum of Rs 52,981/- towards licence fee/additional licence fee for the period from 1st October, 2001 to 04th October, 2001.

23. Balance amount of security deposit which Nidas Estates Private Limited had to refund to Silicon Graphics Systems India Private Limited on 5th October, 2011 comes to Rs. 13,74,835/- in the following manner:

Amount of Security Deposit : Rs. 27,45,000/-

(i) license fee for September, 1995: Rs 1,17,425/-;

(ii) Interest on the sum of Rs 1,17,425/- @ 18% per annum up to 05th October, 2001: Rs. 1,28,410/

(iii) license fee for June, 2001: Rs. 2,23,276/-

(iv) Interest on license fee of June, 2001 up to 05th October, 2001: Rs. 13,306/-

(v) license fee for July, 2001: Rs. 2,23,276/-

(vi) Interest on the license fee of July, 2001 up to 05th October, 2001: Rs. 9,939/-

(vii) License fee of August, 2001: Rs. 2,23,276/-

(viii) Interest on license fee of August, 2001 up to 05th October, 2001: Rs. 6,590/-

(ix) License fee and additional license fee for September, 2001: Rs 3,73,276/-.

(x) Interest on license fee and addl. License fee for September 2001: Rs. 5,226/-

(xi) license fee and additional license fee from 1st October, 2001 up to 04th October, 2001: Rs. 46,165/-

Interest on the amount of Rs. 13,74,835/- from 05th October, 2001 till the date of filing of CS(OS) No. 1661/2003 i.e. 22nd August, 2003 @ 18% per annum comes to Rs. 4,65,004/- The Plaintiff in suit CS(OS) No. 1661/2003 is entitled to recover the aforesaid amount of Rs. 18,39,839/-from Defendant No. 1 in the suit towards balance security deposit and pre-suit interest on it.

24. The Plaintiff in Suit No. 1661/2003 has also claimed a sum of Rs 2,02,100/- being the security deposit by it with Karnataka Electricity Board through and on behalf of Defendant No. 1 along with interest on that amount @ 18% per annum. A perusal of the minutes of the meeting held on 05th October, 2001 would show that Nidas Estates Private Limited had requested Silicon Graphics Systems India Private Limited not to surrender the additional electricity load which it had obtained from Karnataka Electricity Board since it wanted to retain the same. It was also agreed that the deposit paid by Silicon Graphics Systems India Private Limited would be refunded to it by Nidas Estates Private Limited. There is No. dispute with respect to the deposit of Rs 2,02,100/- by Silicon Graphics Systems India Private Limited with Karnataka Electricity Board. In view of the agreement dated 05th October, 2001, Nidas Estates Private Limited is liable to pay the aforesaid amount to Silicon Graphics Systems India Private Limited. However, there is No. agreement between the parties for payment of interest on the aforesaid amount. Hence, Silicon Graphics Systems India Private Limited is not entitled to any amount towards interest on this deposit.

25. Silicon Graphics Systems India Private Limited has also claimed Rs 6,25,000/- which it had deposited with Defendants No. 2 and 3 for the genset and common maintenance services. Though the case of the Silicon Graphics Systems India Private Limited is that the deposit was made on behalf of Nidas Estates Private Limited, there is absolutely No. evidence to prove that the deposit was made on behalf of Nidas Estates Private Limited. There is No. document which would indicate that Nidas Estates Private Limited had agreed to pay this amount to Silicon Graphics Systems India Private Limited. The minutes of the meeting held on 05th October, 2001 indicate that though the deposit was acknowledged by Nidas Estates Private Limited, it was yet to be decided whether this amount would be paid by Nidas

Estates Private Limited or by Embassy Group with which the amount was deposited. Since there is No. proof of the amount having been deposited on behalf of Nidas Estates Private Limited and it had never agreed to pay this amount to Silicon Graphics Systems India Private Limited, this amount cannot be recovered by Silicon Graphics Systems India Private Limited from Nidas Estates Private Limited. It would be pertinent to note here that a decree for recovery of the aforesaid amount has already been passed by this Court against Defendants No. 2 and 3 in Suit No. 1661/2003. It is open to Silicon Graphics Systems India Private Limited to recover this amount from them. Thus, the total amount payable by Nidas Estates Private Limited to Silicon Graphics Systems India Private Limited comes to Rs. 2,041,439/-. The issues are decided accordingly.

26. During the course of arguments, it was contended by the learned Counsel for Nidas Estates Private Limited that Silicon Graphics Systems India Private Limited had failed to prove that the plaint has been signed, verified and instituted by a competent person. No. issue was framed by the Court in this regard. In find that in para 2 of the plaint of Suit No. 1661/2003, it has been specifically alleged that the suit has been signed, verified and instituted by Mr Sanjay Bhanot, who was working as Financial Controller and Companies Secretary with the Plaintiff and who had been duly authorized by the Board of Directors of the Company by a duly passed resolution. There is No. specific denial of this averment in the written statement of Nidas Estates Private Limited. In reply to para 2 of the written statement, Nidas Estates Private Limited simply stated that para 2 was denied for want of knowledge. Denial for want of knowledge is not a specific denial and amounts to admission of the averments which have not been specifically denied.

Order VIII Rule 3 of the Code of Civil Procedure, to the extent it is relevant provides that it shall not be sufficient for a Defendant in his written statement to deny generally the ground alleged by the Plaintiff, but the Defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages. Rule 4 of the aforesaid Order, to the extent it is relevant, provides that where a Defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance.

Therefore, by denying the contents of para 2 of the plaint for want of knowledge, Defendant No. 1 in Suit No. 1661/2003 is deemed to have admitted the averment with respect to competence of Shri Sanjay Bhanot to sign and verify the pleadings and institute the suit on behalf of the Silicon Graphics Systems India Private Limited.

The learned Counsel for the Defendant No. 1 has relied on [State Bank of Travancore Vs. Kingston Computers \(I\) P. Ltd.,](#) , [Lucas Indian Services Ltd. Vs. Sanjay Kumar Agarwal,](#) [Food Corporation of India Vs. Baldev Kaur and Others,](#) , [Birla Dlw Ltd. Vs. Prem Engineering Works,](#) [Monoranjan Paul and Others Vs. Narendra Kumar Paul and Others,](#) and [Nedunuri Kameswaramma Vs. Sampati Subba Rao,](#)

However, none of these judgments are of help to Defendant No. 1 in Suit No. 1661/2003 for the simple reason that neither the authority of Shri Sanjay Bhanot to sign and verify the plaint and institute the suit on behalf of the Plaintiff-company was specifically denied in the written statement nor the Court has framed any issue on this aspect of the matter. In the absence of there being any issue on this aspect, there was No. necessity for the Plaintiff to prove the resolution in favour of Shri Sanjay Bhanot. It would be unfair to return a finding against Silicon Graphics Systems India Private Limited on this aspect of the case without framing an issue and, thereby giving an opportunity to the Plaintiff in this suit to lead evidence in this regard.

Issue No. 5 in CS(OS) No. 1661/2003 and Issue No. 2 in Suit No. 100/2005/02 of District Court

27. In view of my findings on the aforesaid issues, CS(OS) No. 2108/2011 (Suit No. 100/2005/02 of District Court) is liable to be dismissed, whereas Suit No. 1661/2003 is liable to be decreed only for recovery of Rs. 20,41,939/-.

CS(OS) No. 2108/2011 (Suit No. 100/2005/02 of District Court) is hereby dismissed with costs. In Suit No. 1661/2003, a decree for Rs. 20,41,939/- with proportionate cost and pendente lite and future interest @ 6% per annum is passed in favour of the Plaintiff and against Defendant No. 1.

Decree sheet be drawn accordingly.